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**Federal Communications Commission**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
NE Passage Inc.	)	File No.: EB-FIELDNER-13-00010092
Owner of Antenna Structure No. 1063673	)	
Hightstown, New Jersey	)	NOV No.: V201332400039
	)	

**NOTICE OF VIOLATION**

**Released: August 7, 2013**

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's rules (Rules)<sup>1</sup> to NE Passage Inc. (NE Passage), owner of antenna structure number 1063673 located in Hightstown, New Jersey. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violations noted herein.<sup>2</sup>

2. On July 22, 2013, agents of the Enforcement Bureau's Philadelphia Office inspected antenna structure number 1063673 located at 319 Perrineville Road, Hightstown, New Jersey at the coordinates 40° 15' 16" North Latitude 074° 30' 34" West Longitude and observed the following violations:

- a. 47 C.F.R. § 17.4(g): "The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure." At the time of the inspection, the Antenna Structure Registration Number was not posted.
- b. 47 C.F.R. § 17.51(b): "All high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified." At the time of the inspection, one of the two white strobe lights at the mid-level of

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<sup>1</sup> 47 C.F.R. § 1.89.

<sup>2</sup> 47 C.F.R. § 1.89(a).

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the antenna structure and all white strobe lights at the top-level were extinguished.

- c. 47 C.F.R. § 17.47(a): “The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: (a)(1) Shall make an observation of the antenna structure’s lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) Shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.” The owner of NE Passage indicated that no one was monitoring the obstruction lighting once each 24 hours and there was no automatic alarm system installed and operational.
- d. 47 C.F.R. § 17.23: “Unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA’s painting and lighting recommendations set forth on the structure’s FAA determination of ‘no hazard’ ....” The FCC’s Antenna Structure Registration (ASR) database currently specifies that antenna structure number 1063673 requires painting for daytime visibility and red obstruction lighting during the nighttime in accordance with FAA circular number 70/7460-1H, chapters 3, 4, 5 and 13. The antenna structure does not conform to the painting and lighting specifications given in the FCC ASR database because it is not painted and it is equipped with medium intensity flashing white obstruction lighting during the daytime and with red obstruction lighting during the nighttime.<sup>3</sup>
- e. 47 C.F.R. § 17.57: “The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must ... immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.” At the time of the inspection, the antenna structure had an overall height of 116.4 meters (382 feet) above ground level but the ASR specified that the antenna structure 1063673 had an overall height of 78.3 meters (256.9 feet) above ground level. Furthermore, the mailing address listed for NE Passage on the ASR was no longer correct.

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<sup>3</sup> On April 26, 2006, NE Passage obtained a Determination of No Hazard from the Federal Aviation Administration (FAA) in Aeronautical Study No. 2006-AEA-1463-OE specifying that antenna structure number 1063673 have a dual lighting system in accordance with FAA circular number 70/7460-1K, FAA Chapters 4, 8 and 12. NE Passage must submit an application with Commission for modification of the overall height for the antenna structure and include copy of the latest FAA “no hazard” determination with the application.

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3. Pursuant to Section 403 of the Communications Act of 1934, as amended,<sup>4</sup> and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, NE Passage must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.<sup>5</sup>

4. In accordance with Section 1.16 of the Rules, we direct NE Passage to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of NE Passage with personal knowledge of the representations provided in NE Passage's response, verifying the truth and accuracy of the information therein,<sup>6</sup> and confirming that all of the information requested by this Notice which is in the company's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>7</sup>

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission  
Philadelphia Office  
One Oxford Valley Building, Suite 404  
2300 East Lincoln Highway  
Langhorne, Pennsylvania 19047

6. This Notice shall be sent to NE Passage Inc. at its address of record.

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<sup>4</sup> 47 U.S.C. § 403.

<sup>5</sup> 47 C.F.R. § 1.89(c).

<sup>6</sup> Section 1.16 of the Rules provides that "[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person . . . . Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'." 47 C.F.R. § 1.16.

<sup>7</sup> 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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7. The Privacy Act of 1974<sup>8</sup> requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski  
District Director  
Philadelphia Office  
Northeast Region  
Enforcement Bureau

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<sup>8</sup> P.L. 93-579, 5 U.S.C. § 552a(e)(3).